

Letter of Findings: 10-0129P
Sales Tax
For the Year 2009

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests an abatement of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. In 2009, the Department of Revenue (the "Department") assessed Taxpayer sales tax, interest, and penalty because Taxpayer failed to timely remit the sales tax that it had collected on behalf of the State of Indiana concerning tax periods September, October, November, and December 2009. Taxpayer paid the assessed sales tax and interest, but requested that the Department abate the negligence penalty. Upon receiving Taxpayer's request, the Department sent Taxpayer a letter that informed Taxpayer to provide additional evidence or request a hearing within twenty days. Taxpayer did not provide additional evidence nor did it request a hearing. This Letter of Findings, therefore, is written based on the information available within Taxpayer's protest file.

I. Tax Administration – Negligence Penalty.

DISCUSSION

The Department assessed Taxpayer sales tax, interest, and penalty because Taxpayer failed to timely remit the sales tax that it had collected on behalf of the State of Indiana concerning tax periods September, October, November, and December 2009. Taxpayer agreed with the Department that it should have timely remitted the sales tax. Taxpayer, however, argued that its failure to remit the sales tax was not due to negligence, and, therefore, requested the Department to abate the ten percent negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(b), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayer maintained that its failure to remit the sales tax was due to theft committed by one

of its employees. To support its assertion, Taxpayer submitted a letter, which terminated the employment of this said employee on December 14, 2009. However, the Department's Revenue Processing System shows that Taxpayer did not maintain a good compliance record. In the absence of other reliable supporting documentation, Taxpayer's letter alone was not sufficient to establish that Taxpayer's failure to timely remit the sales tax was due to reasonable cause and not due to negligence. Thus, Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

FINDING

Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

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